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Order 99-9-23



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 30th day of September, 1999

**Served: September 30, 1999**

Petitions of

**DELTA AIR LINES, INC.  
and  
AMERICAN AIRLINES, INC.**

for reconsideration of Order 99-7-1, regarding the  
reallocation of U.S.-Brazil frequencies held by  
American Airlines, Inc.

**Docket OST-96-1065**

**1999 U.S.-BRAZIL COMBINATION SERVICE  
CASE**

**Docket OST-99-6284**

**ORDER ON RECONSIDERATION AND  
INSTITUTING A PROCEEDING**

**Summary**

By this order, we grant the separate petitions of Delta Air Lines, Inc., and American Airlines, Inc., for reconsideration of Order 99-7-1, and upon reconsideration, have decided (a) to institute the *1999 U.S.-Brazil Combination Service Case* to consider allocation of seven weekly frequencies on a long-term basis for services in the U.S.-Brazil market, and (b) affirm our decision, with one modification, to authorize American to use the seven weekly frequencies until 90 days after completion of the long-term proceeding or July 1, 2000, whichever is earlier. We have now modified our *pendente lite* award to authorize American to use the frequencies in the New York-Rio de Janeiro market, effective October 1, 1999.

**Background**

American is currently allocated 49 weekly frequencies for its services in the U.S.-Brazil market. Seven of these frequencies had been allocated to American for service in the New York-Rio de Janeiro market (Order 96-3-47). Earlier this year, American announced that it was suspending the New York-Rio de Janeiro service and planned to move the frequencies to the Miami-Brazil market for service beginning on July 2. Delta Air Lines filed a petition for reallocation of these frequencies so that Delta could institute service in the New York-Sao Paulo market. Delta indicated that it could begin this service October 1 or 90 days after a Department award to Delta of the frequencies, whichever came later.

By Order 99-7-1, the Department determined that it was in the public interest to institute a proceeding within a year to determine how the frequencies should be allocated on a long-term basis, and that in the meantime American should be authorized to use temporarily the seven weekly frequencies allocated to it for New York-Rio de Janeiro service for service in the Miami-Rio de Janeiro market, pending conclusion of the long-term proceeding.

### **Petitions for Reconsideration of Order 99-7-1**

On July 9, 1999, Delta petitioned the Department to institute immediately a proceeding to consider the long-term allocation of the seven weekly Brazil frequencies previously allocated to American and to vacate the Department's temporary award of frequencies to American, and instead, to authorize Delta on a *pendente lite* basis to use the seven weekly frequencies for New York-Sao Paulo-Montevideo services. Delta argues that there is no basis for deferring a proceeding and maintains that it is prepared to start service as early as October 1, 1999, or within ninety days of an award, whichever occurs later. Delta argues that the *pendente lite* award to American should be vacated, as such award failed to afford comparative analysis of the two proposals as required by *Ashbacker*.<sup>1</sup>

The New York Parties filed a reply, supporting Delta's petition<sup>2</sup> and urging the Department to reconsider its order. They argue that authorizing American to use the frequencies in the Miami market rather than the New York market reduces the number of flights between JFK and Brazil, a situation that they believe will seriously damage New York's service to this important South American market.

American filed an answer in opposition to Delta's petition and contemporaneously filed its own petition for reconsideration of the Department's order. In its answer, American states that it will resume New York-Rio de Janeiro nonstop service on October 1, 1999, using B767-300ER aircraft and maintains that in these circumstances, there is no reason for further involvement by the Department with respect to these frequencies. American argues, therefore, that the Department should dismiss Delta's original petition of March 31, 1999.

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<sup>1</sup> *Ashbacker v. FCC*, 326 U.S. 327.

<sup>2</sup> The New York Parties consist of the Empire State Development Corporation and The Port Authority of New York and New Jersey.

In support of its petition, American reiterates its arguments that U.S.-Brazil frequencies may be moved from one city pair to another; that its 1996 application provided an “illustrative proposal” showing the city-pair market to be served;<sup>3</sup> that it would not be in the public interest to impose operating constraints on any designated airline in the U.S.-Brazil market that are more restrictive than what is allowed by the underlying bilateral agreement; and that American will restore New York-Rio de Janeiro nonstop service on October 1, 1999, making any further consideration of this matter moot.

Delta filed an answer to American’s petition. Delta argues that American improperly is seeking to claim, on a permanent basis, the seven Brazil *pendente lite* frequencies granted to American by Order 99-7-1 and is trying to circumvent the carrier selection process found necessary in the Department’s order. Delta argues that contrary to American’s petition, American’s decision to transfer (without authorization) the *pendente lite* frequencies back to New York does not moot the need for a carrier selection case. Instead, Delta argues, it underscores the need for prompt institution of a proceeding to maximize the long-term public benefits attainable from a permanent award of the frequencies at issue. Delta argues that American’s petition should be denied and that the Department should promptly institute a carrier selection case regarding the frequencies.

### **Decision**

We have decided to grant the petitions for reconsideration, and upon reconsideration, have decided (a) to institute the proceeding for long-term allocation of the seven weekly frequencies at issue, and (b) to affirm our award of *pendente lite* authority to American to use the frequencies until 90 days after conclusion of the longer-term proceeding or until July 1, 2000, whichever is earlier.

In Order 99-7-1, we stated our intent to conduct a proceeding for the long-term allocation of the seven weekly frequencies. We noted that neither American nor Delta was then entitled to use the seven frequencies at issue for the purpose it desired. Specifically as to American, it is not entitled to move these frequencies to different markets without specific authorization because our original award was city-pair specific. The Department’s 1996 Order allocating these frequencies to American clearly stated that they were “for service in the New York, New York-Rio de Janeiro, Brazil market.” Order 96-3-47, at 4. The Department found its award of these frequencies to be in the public interest because it would “provide the only nonstop service in the market by a U.S. carrier” and would “offer intergateway competition with services operated from the Miami gateway,” *Id.* Thus, there can be no question that the Department’s award of these frequencies was specific to the New York-Rio de Janeiro route and that, therefore, American must receive the Department’s approval before it moves them. With American’s having moved the service to

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<sup>3</sup> American states that in the 1996 application it had proposed New York-Rio de Janeiro service but did not believe its service would be strictly limited to that specific city-pair for all time. American cites the Department’s show cause order (Order 92-5-30) in the *United-Pan American Route Transfer Case*, where the Department explicitly stated that “U.S.-Brazil frequencies may be used in any U.S.-Brazil city-pair market.”

Miami, its latest proposal to move the frequencies back to New York also requires specific Department authorization.<sup>4</sup>

As also noted in Order 99-7-1, the frequencies at issue here differ from those involving either American's purchase of Eastern's South American route network or United's purchase of Pan American World Airways' South American route network. In both of those cases, the transfer of frequencies was not city-pair specific, and thus, the frequencies could be moved without further Department approval.

Given that neither American nor Delta was entitled to use frequencies as it wished, we said that we needed to determine how best to serve the public interest with a long-term allocation. That remains the situation today. American expresses an interest in resuming New York-Rio de Janeiro service but is entitled only to serve Miami-Rio de Janeiro and, at that, only on a *pendente lite* basis. Delta continues to seek New York-Sao Paulo authority. Thus, our basis for needing a proceeding remains, and nothing in the record persuades us otherwise.<sup>5</sup>

While we made clear that we would conduct that proceeding within a year, we elected not to institute the case immediately in light of economic conditions in the U.S.-Brazil market. However, having reviewed the pleadings submitted subsequent to that decision, we have concluded that it is in the public interest to begin the proceeding now. Delta states that economic conditions in Brazil have improved, warranting prompt commencement of the proceeding, and it cites its own experience in the U.S.-Brazil market in support. In addition, American, which had previously said that it was temporarily stopping New York-Brazil service because of economic conditions, but which had further stated that it planned to resume service at New York when justified by economic conditions, has now stated that it intends to resume such service in October. In these circumstances, we find that it is in the public interest to institute the case at this time and to proceed to make a final determination of the long-term allocation of these frequencies.

Therefore, we will institute here the *1999 U.S.-Brazil Combination Service Case* to determine how the seven available frequencies should be allocated for the long term.

Whether authorizing carriers for this service is consistent with the public convenience and necessity will not be at issue. The traffic rights involved constitute a valuable resource obtained in exchange for granting Brazil route opportunities for its airlines to serve the United States. The use of these frequencies will provide important service options to travelers and shippers and will enhance competition in the U.S.-Brazil market. In these circumstances, we find that the public interest clearly calls for use of the rights.

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<sup>4</sup> We address below the matter of American's authority to move the frequencies to New York on a *pendente lite* basis.

<sup>5</sup> We disagree with American that this proceeding is not necessary because American plans to resume its New York service. As just discussed, at this time, no carrier holds a long-term allocation of these seven frequencies, and we have determined that the public interest calls for our making such an allocation. American's use of the frequencies in the interim in no way alters that determination.

American and Delta each have pending requests to use these frequencies. However, since we are examining the long-term needs of the market, we also will afford the other carriers designated to serve Brazil for combination services, Continental Airlines and United Air Lines, an opportunity to apply for allocation of the frequencies.<sup>6</sup> We will also afford American and Delta a further opportunity to amend their applications.

In determining which carrier/gateway will be authorized, our principal objective will be to maximize the public benefits that will result from award of the authority in this case. In this regard, we will consider which applicant will be most likely to offer and maintain the best service for the traveling and shipping public. We will also consider the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S.-Brazil market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where they are relevant.

The U.S.-Brazil agreement provides for beyond services to Paraguay, Uruguay, and Chile. We are prepared to consider in this proceeding the award of beyond authority set forth in the agreement, provided that such proposals are consistent with, and may be implemented under, the relevant bilateral aviation agreements.<sup>7</sup>

We also intend to issue backup authority in this case. In this regard, it is possible that applicant carriers may propose service from different gateways. The considerations that lead to the selection of a carrier and gateway are entirely interrelated, and a gateway's selection for primary service by a particular carrier does not mean that a different carrier at the same city would necessarily represent the next-best alternative. Our primary focus in awarding backup authority is to maximize use of the available route rights in the event that the primary carrier does not institute service or discontinues service during its first year of operations, not to ensure continuation of service from a particular gateway.

## **Procedures and Evidence**

We believe that written, non-oral show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750) are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact that would warrant an oral evidentiary hearing in this case, and we note that the two carriers who have thus far sought the frequencies have not requested oral, evidentiary procedures. We are confident that the issues in this case can be addressed adequately on a written record.

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<sup>6</sup> Under the U.S.-Brazil aviation agreement a total of four U.S. airlines may be designated to operate scheduled combination services. Those four airlines are American, United, Continental and Delta.

<sup>7</sup> We note that currently there are designation and/or frequency limitations on U.S.-Chile and U.S.-Argentina services.

We have appended to this order an evidence request for the benefit of the parties to this case. We emphasize that the evidence request includes specific instructions regarding the type and format of the information to be submitted and, in some instances, the sources of information to be used. We view adherence to these directives as critical to our consideration of the proposals in carrier selection cases. We put all applicants in this case on notice that we expect full compliance with the evidence request appended in this order. Any carrier not complying in any material respect with our request will be subject to elimination from consideration for an award in this case.

In addition to the material requested, applicants and any other parties may submit any additional information that they believe will be useful to us in reaching a decision. To the extent that carriers want to offer alternative traffic forecasts, based on fully documented sources, they are free to do so as additional information for our consideration and comment by other parties to this case. At a minimum, however, applicant carriers must provide a forecast in the format and using the sources set forth in the appended evidence request.

We will also require American, Continental, Delta, and United, the U.S. carriers currently providing combination service in the U.S.-Brazil market, whether or not they participate in this proceeding, to file the service data set forth in the attached Appendix (Appendix A at 2, Section IV A.2). We believe that such data are necessary for a complete record in this case, and therefore, we are exercising our power under 49 U.S.C. 41708 to require these carriers to file these data. Also in keeping with our goal of ensuring a complete record, we have specifically requested evidence that will enable us to weigh the merits of proposals from applicants that may be operating both on a direct service as well as code-share basis.

Consistent with our policy with respect to limited-entry route rights, we will award the U.S.-Brazil authority at issue in this proceeding in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102(c) to the extent that carriers require new certificate authority to implement their proposals. The duration of the authority will be five years in duration for the primary carrier and one year for the backup carrier, unless the latter authority is activated during that time, in which case, it will continue in effect for five years.<sup>8</sup>

We will not award certificates authorizing generalized U.S.-Brazil and beyond route authority broader than that specifically proposed to be served. In a comparative selection proceeding carriers are selected based on their specific service proposals, and the experimental certificates awarded make clear that the award is intended to ensure that the carrier can be measured on the proposal for which it was selected.<sup>9</sup> Therefore, it has been our practice to issue the certificate authority for the markets the carriers actually have submitted a proposal to serve. We expect all applicants to provide very specific proposals at the direct exhibit stage. Carriers should not expect a final award in this case to grant them authority other than that which is included in the service proposals presented in this proceeding.

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<sup>8</sup> See Section 399.120 of our regulations.

<sup>9</sup> See Order 95-10-24 at 10 (*U.S.-Peru Combination Service Proceeding*, Docket OST 95-370) and Order 97-9-2 at 6 (*1997 U.S.-Brazil Combination Service Proceeding*, Docket OST-96-2016).

Consistent with our current practice, the frequencies allocated in this proceeding will be for an indefinite term, provided that the carrier continues to hold the underlying economic authority for the specific markets authorized. The frequencies to be awarded will also be subject to our standard 90-day dormancy condition, wherein the frequencies will be deemed dormant if they are not operated for 90 days in the market authorized, except where service in the market is seasonal. In all such instances of seasonal service, however, a carrier must notify the Department that its operations are of a seasonal nature; otherwise, the dormancy condition will apply. Under the dormancy condition if flights allocated are not used for 90 days, the frequencies expire automatically, and the frequencies revert to the Department for reallocation so that they can be available for other carriers on an immediate basis should they seek to use them.

### **Procedural Timetable**

We believe it is in the public interest to select a carrier for long-term use of the available frequencies as soon possible. To this end, we are establishing the following procedural schedule for submissions in this case:

Petitions for Reconsideration of instituting order, <sup>10</sup>	October 7, 1999
new applications & supplemented applications:	
Answers to petitions for reconsideration, applications	
and supplemented applications:	October 14, 1999
DOT Information Responses:	October 8, 1999
Carrier Information Responses:	October 8, 1999
Direct Exhibits:	October 29, 1999
Rebuttal Exhibits:	November 19, 1999
Briefs:	December 10, 1999

All dates are delivery dates and all submissions must be filed in the docket assigned to this proceeding. An original and five copies of all submissions are to be received by the Department of Transportation Dockets no later than the dates indicated.<sup>11</sup> For convenience of the parties, service by facsimile is authorized. Parties should include their fax numbers on their submissions and should indicate on their certificates of service the methods of service used.

### **Pendente Lite Authority**

By Order 99-7-1, we determined that it is in the public interest to authorize American to use the frequencies at issue on a temporary basis, pending a final decision in the long-term allocation

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<sup>10</sup> As we have addressed in this order petitions for reconsideration regarding the institution of the long-term proceeding, we will not entertain any further petitions on this issue nor any other issues encompassed by the already-filed petitions. We will entertain only those petitions that concern issues raised for the first time in the present instituting order.

<sup>11</sup> The original filing should be 8½" x 11" paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, filers may use the electronic submission capability through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site.

proceeding for the frequencies. Delta has petitioned for reconsideration of this decision, arguing that its *pendente lite* proposal to serve the New York-Sao Paulo market was not given sufficient consideration. We have fully considered Delta's arguments and affirm our *pendente lite* award to American.

In the case before us, American was the only carrier that was in a position immediately to use the frequencies. Delta was not prepared to begin using the frequencies until October 1 or until 90 days after an award by the Department, whichever was later. That remains the case now, since Delta has again said that it could not begin service until 90 days after a Department decision. American is thus in a position to ensure that the frequencies can be used on a continuous basis, an important public benefit for this *pendente lite* award. On balance, in the circumstances presented, the public interest is best served by allowing American to resume its New York-Rio de Janeiro service, pending the outcome of our long-term proceeding.

As with American's initial plans to move the frequencies to the Miami-Rio de Janeiro market, its proposed resumption of New York service, which involves moving the frequencies back to the New York market, requires prior approval. We will amend our initial award to authorize American to use the frequencies in the New York-Rio de Janeiro market, effective October 1, 1999, through the term of its *pendente lite* award (*i.e.*, through July 1, 2000, or 90 days after a final decision in the long-term case, whichever occurs earlier). Given the temporary nature of the *pendente lite* award and our desire to ensure maximum use of these valuable route rights pending a final decision on the long-term allocation of the frequencies at issue, we believe that this result best serves the public interest in the circumstances presented. As we stated with respect to our initial award, American will be accorded no preference in the long-term case by virtue of this temporary *pendente lite* authority.

#### **ACCORDINGLY,**

1. We grant the separate petitions of Delta Air Lines, Inc. and American Airlines, Inc. for reconsideration of Order 99-7-1;
2. We institute the *1999 U.S.-Brazil Combination Service Proceeding*, Docket **OST-99-6284**, to be decided by non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750);
3. The proceeding instituted in ordering paragraph two will consider the following issues:
  - a. Which carrier and which gateway should be selected for use of the available seven weekly frequencies and which carrier/gateway should be selected for backup service between a point in the United States and a point or points in Brazil, consistent with the provisions of the amended U.S.-Brazil agreement;
  - b. What other authorities, including route integration authority, should be granted in conjunction with the Brazil services authorized in this proceeding; and

c. What terms, conditions, and limitations should be imposed on any existing certificate authority, and any new certificate authority or frequency allocation awarded in this proceeding.

4. Upon reconsideration, we affirm our *pendente lite* award of seven weekly frequencies to American Airlines for use in the Miami-Rio de Janeiro market but amend that authorization to permit American to use these seven weekly frequencies on a *pendente lite* basis in New York-Rio de Janeiro market, effective October 1, 1999;

5. We require that petitions for reconsideration of this order, as described above in the body of this order, be filed no later than October 7, 1999; answers to such petitions shall be due no later than October 14, 1999;

6. We require all U.S. carriers providing scheduled combination service in the U.S.-Brazil market, whether or not they seek new or additional authority in this proceeding, to file the incumbent carrier data requested in Section IV.A.2 of the attached evidence request; and

7. We will serve this order on American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., United Air Lines, Inc., the New York Parties, the Ambassador of Brazil in Washington, DC, the U.S. Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration.

By:

**A. BRADLEY MIMS**  
Acting Assistant Secretary for  
Aviation and International Affairs

(SEAL)

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[http://dms.dot.gov/reports/report\\_aviation.asp](http://dms.dot.gov/reports/report_aviation.asp)*

## **EVIDENCE REQUEST**

### **I. Advisory Regarding Compliance**

In responding to this evidence request, all parties are advised to heed the admonitions and notice regarding compliance contained in the attached order, at 5.

### **II. Public Disclosure of Data**

Pursuant to section 241.19-6 of the Department's regulations, it is determined that the Department's T-100 data for the period January 1, 1996, through final Department decision in this proceeding, and the Origin & Destination Survey Data (Data Bank 2-A) for the period January 1, 1995, through final Department decision in this proceeding, for operations between the United States and Brazil, are material and relevant to a final determination of the issues in this case. Those data have been released to the U.S. carriers and U.S. non-airline civic and governmental parties to this proceeding, who will be free to use those data to the extent they deem necessary.

### **III. Procedures and Ground Rules**

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.

### **IV. Requests for Information and Evidence**

#### **A. Information Responses**

##### **1. DOT Data**

The Competition and Policy Analysis Division of the Office of Aviation Analysis will make available to the parties the following data in the form of information responses:<sup>1</sup>

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<sup>1</sup> Due to the volume of this material, we will be unable to print and distribute copies to the parties. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, SW, Washington, DC, upon request. In addition, the Department will issue on request copies of the information requests on computer diskettes. Parties who wish to receive diskette versions of the information responses, should contact the Competition and Policy Analysis Division, at (202) 366-2352. The Department will make this material available immediately.

Use of the data contained in the Department's Information Responses (either from hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.*, those that have filed applications or comments) in this proceeding.

(a) T-100 nonstop segment data, by month, beginning January 1, 1996, through the latest available month, between the United States, on the one hand, and Brazil, on the other.

(b) T-100 on-flight market data, by month, beginning January 1, 1996, through the latest available month, between the United States, on the one hand, and Brazil, on the other.

(c) For the Calendar Years 1995 through 1998, O&D traffic from Table 15 of the Department's O&D Survey between all U.S. points, on the one hand, and Rio de Janeiro, Sao Paulo, and Manaus, Brazil.

(d) For the 12 months ended December 31, 1998, from the Department's O&D Survey between all U.S. points, on the one hand, and Rio de Janeiro, Sao Paulo and Manaus, Brazil, on the other, that used the following gateways: Atlanta, Chicago, Los Angeles, Miami, New York/Newark, San Francisco, Washington DC and "all others."

## 2. Incumbent Data (American, Continental, Delta, and United)

For each month for the twelve months' ended August 1999, provide the number of flights and complete flight itinerary for all flights operated in each city-pair market where service was provided in the U.S.-Brazil market, and the type aircraft used in providing those services. If service was seasonal, the markets and level of service should be clearly identified. Carriers should distinguish flights operated under code share and those that are not operated under code share.

## B. Direct Exhibits

The applicant carriers are directed to provide the sources, in exhibit form, for their traffic forecast. The source data for traffic forecasts made by any party shall be (1) the Department's O&D Survey and/or (2) the U.S. International Air Travel Statistics (commonly referred to as INS Data), or (3) a combination of these data sources, provided that the respective contributing role of each source is clearly delineated. Indicate growth rates, stimulation rates, and participation rates, and clearly outline the bases for such rates.<sup>2</sup>

Any party may provide a separate, additional forecast based on other source data if it wishes, but if so, that party should clearly explain the differences between its data source and the two specified above (*e.g.*, differences in collection methods, or adjustments made to raw data). Furthermore, the information in such additional forecast shall be set forth in such a manner that any other party could construct a traffic forecast from the exhibits without the necessity of having the actual source document at hand.

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<sup>2</sup> The base year for traffic forecasting purposes should be 12 months ended December 31, 1998, and the forecast year should be the 12 months ended March 31, 2001.

1. Applicant Carriers

Submit, at a minimum, the following:<sup>3</sup>

- (a) Firm date for instituting service in the market, a breakdown for peak and off-peak seasons, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year (12 months ending March 31, 2001). If carriers intend to offer seasonal service only, they must so specify and specify the period during which the seasonal service would be offered;

Schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

- (b) Separate passenger traffic forecasts on an O&D market-by-market (city-pair) basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending March 31, 2001. The forecasts should be based upon the applicant's proposed schedules and should detail specifically the data sources of all traffic. Include any anticipated traffic changes in other markets on the applicant's existing system, including, but not limited to, diversion and service level/aircraft changes as a result of the proposal in this case. The basis for any forecasting technique used should be clearly explained. Indicate any anticipated seasonal fluctuations;
- (c) An indication whether or not the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and to the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed.

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<sup>3</sup> The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, filers may use the electronic submission capability available through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions in the web site.

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Competition and Policy Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street SW, Washington, DC 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel®, Lotus 1-2-3® (version 3.x or earlier), Microsoft Word®, or WordPerfect® (version 5.2 or earlier) should be filed in their native formats. Parties using other software may either (1) file IR's, exhibits and briefs in the foregoing formats, or (2) contact Mr. Michael Lane at 202-366-2352 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.

Indicate whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance;

- (d) Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service;
- (e) A description of any code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-Brazil service operated by a foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partners.<sup>4</sup> If in an existing code-share relationship with carriers involving the U.S.-Brazil market, provide in detail a description of whether proposed services in this proceeding will replace, supplement, or decrease operations with said code-share partners. Any carrier operating under a code-share agreement that has not filed that agreement, or any revisions thereto, with the Department should provide a copy of that agreement, and any revisions, in its direct exhibits. If both code-share and separate operations will be conducted, the applicant's exhibits should clearly reflect the full scope of the carrier's operations, including the levels of service under each operational arrangement, the cities to be served and traffic forecasts.
- (f) Responses to the following interrogatories:<sup>5</sup>
  - (1) Will the carrier, if selected as backup, accept a condition in its certificate which (a) permits it to implement authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?
  - (2) Will the carrier selected for primary authority accept a condition in the the certificate requiring institution of service by a date specified by the Department? What date should the Department specify?

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<sup>4</sup> Traffic forecasts under IV.B.1(b), *supra*, should separately show connecting feed from the applicant's foreign-flag code-sharing partner(s).

<sup>5</sup> Any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate issued will be for one year.